

THE STATE OF NEW HAMPSHIRE
SUPREME COURT OF NEW HAMPSHIRE
O R D E R

Pursuant to Part II, Article 73-a of the New Hampshire Constitution and Supreme Court Rule 51, the Supreme Court of New Hampshire adopts the following amendments to court rules.

1. Amendments to Supreme Court Rule 37(2)(a), 37(3)(c), 37(16)(g), and 37(16)(j), regarding the attorney discipline system, as set forth in Appendix A.
2. Amendments to Supreme Court Rule 37A(III)(d)(4)(A) and 37A(V)(g), regarding rules and procedures of the attorney discipline system, as set forth in Appendix B.
3. Amendments to Supreme Court Rule 38, Application of the Code of Judicial Conduct section E, regarding the application of the Code of Judicial Conduct, as set forth in Appendix C.
4. Amendments to Supreme Court Rule 39, regarding the Judicial Conduct Committee, on a temporary basis, as set forth in Appendix D.
5. Amendments to Supreme Court Rule 40(2), regarding the definition of "judge," as set forth in Appendix E.
6. Amendments to Supreme Court Rule 42(13), regarding admission on motion to the bar, as set forth in Appendix F.
7. Adoption of Supreme Court Rule 42B, regarding character and fitness standards, as set forth in Appendix G.
8. Amendments to Supreme Court Rule 47, regarding procedures related to counsel fees and expenses in indigent criminal cases, as set forth in Appendix H.
9. Amendments to Supreme Court Rule 48, regarding procedures related to counsel fees and expenses in other indigent cases, as set forth in Appendix I.

10. Amendments to Supreme Court Rule 48-A, regarding procedures related to guardian ad litem fees in indigent cases, as set forth in Appendix J.

11. Amendments to Superior Court Rule 93-A, regarding fees for guardian ad litem appointed to represent minor victims or witnesses in sex-related criminal cases, as set forth in Appendix K.

12. Amendment to Probate Court Rule 20, regarding withdrawals, as set forth in Appendix L.

13. Amendments to Family Division Rules, General Rule 7, regarding miscellaneous provisions, as set forth in Appendix M.

Note: To assist the reader in identifying the changes that are being made to existing rules, most appendices containing an amended rule set forth two versions of that amended rule. The first version, entitled "Unofficial Annotated Version," highlights the amendments to the rule by placing new material both in **[brackets and in bold-face type]**, and by ~~striking out~~ material that has been deleted from the rule. The second version, entitled "Official Version," sets forth the text of the newly amended rule without annotations.

These amendments shall take effect on July 1, 2006. The temporary amendments in Appendix D shall be referred to the Advisory Committee on Rules for its recommendation as to whether they should be adopted on a permanent basis.

Date: April 25, 2006

ATTEST: _____
Eileen Fox, Clerk of Court
Supreme Court of New Hampshire

APPENDIX A

Amend Supreme Court Rule 37(2)(a), 37(3)(c), 37(16)(g), and 37(16)(j), as follows:

Unofficial Annotated Version

[Rule 37(2)(a)]

(a) *Appeal*: "Appeal" means an appeal to this court by a respondent or disciplinary counsel of a decision of the professional conduct committee. **[An appeal shall not be a mandatory appeal. See Rule 3.]** An appeal shall be based on the record before the professional conduct committee and shall be limited to issues of errors of law and unsustainable exercises of discretion.

[Rule 37(3)(c)]

(c) The professional conduct committee shall have the power and duty:

(1) To appoint a disciplinary counsel and a general counsel and such deputy and assistant disciplinary counsel and general counsel as may from time to time be required to properly perform the functions hereinafter prescribed. To appoint other professional staff, including auditors, and clerical staff whether full-time or part-time. To appoint independent bar counsel if needed.

(2) To consider hearing panel reports and written memoranda of disciplinary counsel and respondents. To conduct oral arguments in which disciplinary counsel and each respondent are given ten (10) minutes to address the findings and rulings contained in the hearing panel reports. After consideration of oral arguments, hearing panel reports, transcripts of hearings before hearing panels and memoranda, to determine whether there is clear and convincing evidence of violations of the rules of professional conduct. To remand complaints to hearing panels for further evidentiary proceedings. To dismiss grievances or complaints, with or without a warning, administer a reprimand, public censure or a suspension not to exceed six (6) months.

(3) To attach such conditions as may be appropriate to any discipline it imposes.

(4) To divert attorneys out of the attorney discipline system as appropriate and on such terms and conditions as is warranted.

(5) To institute proceedings in this court in all matters which the professional conduct committee has determined warrant the imposition of disbarment or of suspension for a period in excess of six (6) months.

(6) To consider and act upon requests by disciplinary counsel or respondents to review a decision by the complaint screening committee to refer a complaint to disciplinary counsel for the scheduling of a hearing.

(7) To consider and act upon requests from disciplinary counsel to dismiss a matter prior to a hearing if disciplinary counsel concludes that the development of evidence establishes that there is no valid basis for proceeding to a hearing.

(8) To consider and act upon requests for reconsideration of its own decisions.

(9) To consider and act upon requests for protective orders.

(10) To propose rules of procedure not inconsistent with the rules promulgated by this court.

(11) To be responsible for overseeing all administrative matters of the attorney discipline system.

(12) To require a person who has been subject to discipline imposed by the professional conduct committee to produce evidence of satisfactory completion of the multistate professional responsibility examination, in appropriate cases.

(13) To educate the public on the general functions and procedures of the attorney discipline system.

(14) Upon its approval of the annual report prepared by the attorney discipline office, to file a copy of the report with the chief justice of the supreme court and to make copies of the report available to the public.

Any attorney aggrieved by a finding of professional misconduct or by a sanction imposed by the professional conduct committee shall have the right to appeal such finding and sanction to this court. ~~Disciplinary~~ **[court; disciplinary]** counsel shall have the right to appeal a sanction.

[Such appeals shall not be mandatory appeals.] Such rights must be exercised within thirty (30) days from the date on the notice of the finding and sanction. In the event that an attorney aggrieved by a finding of professional misconduct and sanction imposed by the professional conduct committee has filed a timely request for reconsideration pursuant to Supreme Court Rule 37A(VI), the right to appeal the finding of professional misconduct and the sanction shall be exercised within thirty (30) days from the date of the letter notifying the attorney of the professional conduct committee's decision on the request for reconsideration. Successive requests for reconsideration shall not stay the running of the appeal period. The manner of the appeal shall be based on the record before the professional conduct committee ~~and shall include the right to submit briefs and present oral argument.~~ The findings of the professional conduct committee may be affirmed, modified or reversed.

[Rule 37(16)(g)]

(g) Either a respondent attorney or disciplinary counsel may appeal findings of the professional conduct committee and the imposition of a reprimand, public censure or a suspension of six (6) months or less by filing a notice of appeal with the supreme court. **[The appeal shall not be a mandatory appeal.]** ~~The court shall, after the filing of briefs and oral argument,~~ **[If the appeal is accepted by the court, the court may]** affirm, reverse or modify the findings of the professional conduct committee.

The filing of an appeal by the respondent shall stay the disciplinary order being appealed unless the professional conduct committee orders otherwise. If the professional conduct committee orders otherwise, it shall set forth in its order its reasons for doing so. In all cases, however, the supreme court may on motion for good cause shown stay the disciplinary order.

[Rule 37(16)(j)]

(j) Appeals to the court shall be in the form ~~prescribed by the court.~~ **[prescribed by Rule 10, unless otherwise ordered by the court.]** Such appeals shall be based on the record and there shall not be a *de novo* evidentiary hearing.

Official Version

[Rule 37(2)(a)]

(a) *Appeal*: "Appeal" means an appeal to this court by a respondent or disciplinary counsel of a decision of the professional conduct committee. An appeal shall not be a mandatory appeal. See Rule 3. An appeal shall be based on the record before the professional conduct committee and shall be limited to issues of errors of law and unsustainable exercises of discretion.

[Rule 37(3)(c)]

(c) The professional conduct committee shall have the power and duty:

(1) To appoint a disciplinary counsel and a general counsel and such deputy and assistant disciplinary counsel and general counsel as may from time to time be required to properly perform the functions hereinafter prescribed. To appoint other professional staff, including auditors, and clerical staff whether full-time or part-time. To appoint independent bar counsel if needed.

(2) To consider hearing panel reports and written memoranda of disciplinary counsel and respondents. To conduct oral arguments in which disciplinary counsel and each respondent are given ten (10) minutes to address the findings and rulings contained in the hearing panel reports. After consideration of oral arguments, hearing panel reports, transcripts of hearings before hearing panels and memoranda, to determine whether there is clear and convincing evidence of violations of the rules of professional conduct. To remand complaints to hearing panels for further evidentiary proceedings. To dismiss grievances or complaints, with or without a warning, administer a reprimand, public censure or a suspension not to exceed six (6) months.

(3) To attach such conditions as may be appropriate to any discipline it imposes.

(4) To divert attorneys out of the attorney discipline system as appropriate and on such terms and conditions as is warranted.

(5) To institute proceedings in this court in all matters which the professional conduct committee has determined warrant the imposition of disbarment or of suspension for a period in excess of six (6) months.

(6) To consider and act upon requests by disciplinary counsel or respondents to review a decision by the complaint screening committee to refer a complaint to disciplinary counsel for the scheduling of a hearing.

(7) To consider and act upon requests from disciplinary counsel to dismiss a matter prior to a hearing if disciplinary counsel concludes that the development of evidence establishes that there is no valid basis for proceeding to a hearing.

(8) To consider and act upon requests for reconsideration of its own decisions.

(9) To consider and act upon requests for protective orders.

(10) To propose rules of procedure not inconsistent with the rules promulgated by this court.

(11) To be responsible for overseeing all administrative matters of the attorney discipline system.

(12) To require a person who has been subject to discipline imposed by the professional conduct committee to produce evidence of satisfactory completion of the multistate professional responsibility examination, in appropriate cases.

(13) To educate the public on the general functions and procedures of the attorney discipline system.

(14) Upon its approval of the annual report prepared by the attorney discipline office, to file a copy of the report with the chief justice of the supreme court and to make copies of the report available to the public.

Any attorney aggrieved by a finding of professional misconduct or by a sanction imposed by the professional conduct committee shall have the right to appeal such finding and sanction to this court; disciplinary counsel shall have the right to appeal a sanction. Such appeals shall not be mandatory appeals. Such rights must be exercised within thirty (30) days from the date on the notice of the finding and sanction. In the event that an attorney aggrieved by a finding of professional misconduct and sanction imposed by the professional conduct committee has filed a timely request for reconsideration pursuant to Supreme Court Rule 37A(VI), the right to appeal the finding of professional misconduct and the sanction shall be exercised within thirty (30) days from the date of the letter notifying the attorney of the professional conduct committee's

decision on the request for reconsideration. Successive requests for reconsideration shall not stay the running of the appeal period. The manner of the appeal shall be based on the record before the professional conduct committee. The findings of the professional conduct committee may be affirmed, modified or reversed.

[Rule 37(16)(g)]

(g) Either a respondent attorney or disciplinary counsel may appeal findings of the professional conduct committee and the imposition of a reprimand, public censure or a suspension of six (6) months or less by filing a notice of appeal with the supreme court. The appeal shall not be a mandatory appeal. If the appeal is accepted by the court, the court may affirm, reverse or modify the findings of the professional conduct committee.

The filing of an appeal by the respondent shall stay the disciplinary order being appealed unless the professional conduct committee orders otherwise. If the professional conduct committee orders otherwise, it shall set forth in its order its reasons for doing so. In all cases, however, the supreme court may on motion for good cause shown stay the disciplinary order.

[Rule 37(16)(j)]

(j) Appeals to the court shall be in the form prescribed by Rule 10, unless otherwise ordered by the court. Such appeals shall be based on the record and there shall not be a *de novo* evidentiary hearing.

APPENDIX B

Amend Supreme Court Rule 37A(III)(d)(4)(A) and 37A(V)(g) as follows:

Unofficial Annotated Version

[Rule 37A(III)(d)(4)(A)]

(4) Appeal of Sanction.

(A) A respondent shall be entitled to appeal a finding of professional misconduct or a sanction, and disciplinary counsel shall be entitled to appeal a sanction, issued by the professional conduct committee by filing a written ~~notice of appeal~~ in accordance with ~~the rules of the supreme court.~~ **[Rule 10, unless otherwise ordered by the court. The appeal shall not be a mandatory appeal.]** The appeal shall be public.

[Rule 37A(V)(g)]

(g) Denial of Request for Annulment.

Upon denial of an order of annulment, the respondent may appeal to the supreme court within thirty (30) days of the date of receipt of the denial. **[The appeal shall not be a mandatory appeal.]** Upon such appeal, the burden shall be upon the respondent to show that the professional conduct committee's exercise of its discretion in denying the order of annulment is unsustainable.

Official Version

[Rule 37A(III)(d)(4)(A)]

(4) Appeal of Sanction.

(A) A respondent shall be entitled to appeal a finding of professional misconduct or a sanction, and disciplinary counsel shall be entitled to appeal a sanction, issued by the professional conduct committee by filing a written appeal in accordance with Rule 10, unless

otherwise ordered by the court. The appeal shall not be a mandatory appeal. The appeal shall be public.

[Rule 37A(V)(g)]

(g) Denial of Request for Annulment.

Upon denial of an order of annulment, the respondent may appeal to the supreme court within thirty (30) days of the date of receipt of the denial. The appeal shall not be a mandatory appeal. Upon such appeal, the burden shall be upon the respondent to show that the professional conduct committee's exercise of its discretion in denying the order of annulment is unsustainable.

APPENDIX C

Amend Supreme Court Rule 38, Application of the Code of Judicial Conduct, section E, as follows:

Unofficial Annotated Version

E. Clerks, Deputy Clerks, Registers of Probate, Any Persons Performing the Duties of a Clerk or Register, and Court Stenographers[, **Monitors**] and Reporters. Clerks, deputy clerks, registers of probate, deputy registers of probate, any persons performing the duties of a clerk or register, and court stenographers[, **monitors**] and reporters shall comply with Sections 1, 2, 3A, 3B(2), 3B(3), 3B(4), 3B(5), 3B(8), 3B(9), 3B(11), 3C(1), 3C(2), 3C(4) and 3D.

Official Version

E. Clerks, Deputy Clerks, Registers of Probate, Any Persons Performing the Duties of a Clerk or Register, and Court Stenographers, Monitors and Reporters. Clerks, deputy clerks, registers of probate, deputy registers of probate, any persons performing the duties of a clerk or register, and court stenographers, monitors and reporters shall comply with Sections 1, 2, 3A, 3B(2), 3B(3), 3B(4), 3B(5), 3B(8), 3B(9), 3B(11), 3C(1), 3C(2), 3C(4) and 3D.

APPENDIX D

Amend Supreme Court Rule 39 as follows:

Unofficial Annotated Version

RULE 39. COMMITTEE ON JUDICIAL CONDUCT

(1) Authority

Pursuant to the supreme court's constitutional and statutory authority, and to provide for the orderly and efficient administration of the Code of Judicial Conduct, Rule 38 of the Rules of the Supreme Court, there is hereby established a committee on judicial conduct.

(2) Appointment of Committee

(a) The committee on judicial conduct shall consist of eleven members **[and eleven alternate members. Alternate members may participate in committee proceedings only as specifically provided in this rule]**.

(1) One member **[and one alternate member who]** shall **[each]** be an active or retired justice of the superior court; one **[member and one alternate member who shall each be]** an active or retired district court judge; and one **[member and one alternate member who shall each be]** an active or retired probate court judge, all of whom shall be appointed by the supreme court.

(2) One member **[and one alternate member who]** shall **[each]** be a clerk of court and **[who]** shall be appointed by the supreme court.

(3) One member **[and one alternate member who]** shall **[each]** be a New Hampshire Bar Association member and **[who]** shall be appointed by the president of the New Hampshire Bar Association.

(4) One public member **[and one alternate public member]**, who shall not be a judge, attorney, clerk of court, or elected or appointed public official, shall be appointed by the president of the New Hampshire Bar Association.

(5) One public member **[and one alternate public member]**, who shall not be a judge, attorney, clerk of court, or elected or appointed public official, shall be appointed by the supreme court.

(6) Two public members **[and two alternate public members]**, who shall not be judges, attorneys, clerks of court, or elected or appointed public officials, shall be appointed by the Governor.

(7) One public member **[and one alternate public member]**, who shall not be a judge, clerk of court, or attorney, shall be appointed by the president of the Senate.

(8) One public member **[and one alternate public member]**, who shall not be a judge, clerk of court, or attorney, shall be appointed by the speaker of the House.

(b) *Committee Address*

The committee address shall be determined by the committee.

(3) *Terms of Office*

(a) The terms of the current members serving on July 1, 2005, shall continue until, and expire at the end of, the dates set forth below. The appointing authority who shall fill any vacancy for each current member is also set forth below.

<u>Current Member</u>	<u>Expiration Date</u>	<u>Appointing Authority</u>
Alfred Catalfo, III, Esquire	July 1, 2005	Bar President (public member position)
Harland W. Eaton	July 1, 2005	Governor
Elizabeth Lown	July 1, 2005	House Speaker
Jay Rosenfield	July 1, 2005	Senate President
Hon. Raymond A. Cloutier	July 1, 2006	Supreme Court (probate court judge position)
Hon. Douglas S. Hatfield	July 1, 2006	Supreme Court (district court judge position)
Wilfred L. Sanders, Esq.	July 1, 2006	Bar President (attorney member position)
Dr. Robert O. Wilson	July 1, 2006	Governor

Hon. Patricia C. Coffey	July 1, 2007	Supreme Court (superior court justice position)
Lawrence W. O'Connell	July 1, 2007	Supreme Court (public member position)
Dana Zucker	July 1, 2007	Supreme Court (clerk of court position)

Each member serving on July 1, 2005, shall continue to serve as a member until his or her successor is appointed. The initial term of the first eleven members appointed after July 1, 2005, which may include appointments of members who were serving on July 1, 2005, shall be for a three-year term.

[The initial term of all alternate members appointed shall be for three years.]

(b) All terms after the initial appointments set forth in subparagraph (a) shall be for three years.

(c) A member may serve a maximum of three successive terms, all of which commenced after July 1, 2005. After the expiration of the member's third successive term, the member may not again be appointed to the committee**[, either as a member or as an alternate member,]** until three years after the date of the member's last day as a member of the committee. **[An alternate member may serve an unlimited number of terms as an alternate.]**

(d) If any appointing authority other than the supreme court fails to appoint a member **[or an alternate member]** to fill a vacancy for a period of three months following the date upon which notice is sent to the appointing authority informing the appointing authority of the vacancy, the supreme court may appoint a member **[or alternate member]** to fill the vacancy. The person appointed shall have the same qualifications as would have been required had the appointing authority filled the vacancy.

(4) *Vacancy and Disqualification*

(a) A vacancy in the office of the committee shall occur

(1) when **[the term of a member or alternate member]** a ~~member's term~~ expires; provided, however, that such member **[or alternate member]** shall continue to serve until his or her successor is appointed; or

(2) when a judge who is a member **[or alternate member]** of the committee ceases to hold the office which he or she held at the time of selection; or

(3) when a lawyer ceases to be in good standing in all jurisdictions where admitted to practice law, or is appointed to a judicial office or as a clerk of court; or

(4) when a public member **[or alternate public member]** becomes a lawyer, clerk of court, or a judge; or

(5) when a public member **[or alternate public member]** appointed by the Governor or the President of the New Hampshire Bar Association becomes an elected or appointed public official; or

(6) when a member **[or alternate member]** ceases to be domiciled in New Hampshire; or

(7) when a clerk of court who is a member **[or alternate member]** of the committee ceases to hold the office which he or she held at the time of selection; or

(8) when a member **[or alternate member]** is removed from office by the committee as provided in paragraph 10; or

(9) when a member **[or alternate member]** ceases to hold office by submitting his or her resignation to the committee or otherwise.

(b) A vacancy shall be filled by selection of a successor with the same qualifications as those required for the selection of his or her predecessor in office. A member **[or alternate member]** selected to fill a vacancy shall hold office for the unexpired term of his or her predecessor.

(c) No member shall participate in any proceedings before the committee involving his or her own conduct **[or the conduct of any other member. No alternate member shall participate in any proceedings before the committee involving his or her own conduct]**.

(d) No member **[or alternate member]** shall participate in any proceeding in which his or her impartiality might reasonably be questioned.

(e) Whenever a member is disqualified from participating in a particular proceeding, or is unable to participate by reason of prolonged absence or physical or mental incapacity, ~~the appropriate appointing~~

~~authority, upon written request of the chair, may appoint an alternate~~
[an alternate member may be assigned by the chair] to participate in any such proceeding or for the period of any such disability, **[provided that said]** ~~any such alternate~~ **[member shall]** ~~to have~~ **[been appointed by the same appointing authority as the member who is being replaced, and shall have]** the same qualifications as those required for the selection of the member who is being replaced. **[If, however, due to disqualification or incapacity, there is no alternate member who was appointed by the same appointing authority with the same qualifications who is able to participate, then the chair may assign any other alternate member to participate in the proceeding or for the period of the member's disability.]**

(5) Expenses of the Committee and Staff

(a) The committee's budget shall be a separate PAU within the judicial branch budget. The committee shall prepare its own budget request. The budget request and such additional information as may be requested shall be submitted to the director of the administrative office of the courts for inclusion in the judicial branch budget request in the amounts requested. Expenses approved for payment by the committee shall be paid by the administrative office of the courts from funds appropriated for the judicial conduct committee.

(b) Members **[and alternate members]** shall serve without compensation for their services, but shall be reimbursed for necessary expenses incurred in the performance of their duties, subject to the availability of funds.

(c) The committee shall appoint an executive secretary and such other persons as may be necessary to assist the committee in its work. The executive secretary shall perform the duties and responsibilities prescribed by this rule and Supreme Court Rule 40, and such other duties and responsibilities as the committee may determine from time to time. He or she shall notify the appropriate appointing authority whenever a member's **[or alternate member's]** term expires or a vacancy in the office of the committee otherwise occurs. He or she shall receive all grievances, information, and inquiries, and process the same under the direction and supervision of the committee. The executive secretary shall maintain the committee's records, maintain statistics concerning the operation of the committee, and prepare an annual report of the committee's activities for presentation to the committee. He or she shall coordinate investigations ordered by the committee, and ensure that they are conducted discreetly and with dispatch. Subject to the direction and control of the committee, and subject to the availability of appropriated funds, the executive secretary shall have charge of the disbursement of

expense funds. Generally, the executive secretary shall supervise the work of other personnel employed by the committee, direct the activities of the committee's office, and endeavor to keep members of the committee properly informed about its business.

(d) ~~Subject to the availability of funds, the~~ **[The]** committee may employ counsel. The duties of counsel shall be determined by the committee.

(e) ~~Subject to the availability of funds, the~~ **[The]** committee may employ such private investigators, experts and other personnel as the committee in its discretion deems necessary for the efficient discharge of its duties.

(f) ~~Subject to the availability of funds, the~~ **[The]** committee shall select its own office space, which should not be in the facilities of any branch of government.

(6) *Quorum and Chairperson*

(a) A quorum for the transaction of business by the committee shall be six members; provided, however, that no formal charges shall be instituted or unfavorable action taken against a judge except upon the affirmative vote of at least seven members. Except as otherwise provided in this rule or in Supreme Court Rule 40, no act of the committee shall be valid unless concurred in by six of its members.

Members of the committee may participate in a meeting of the committee by means of a conference telephone or similar communications equipment, provided all persons participating in the meeting can hear each other. Participation by these means shall constitute presence in person at a meeting. These procedures shall not be used for hearings.

(b) If a quorum of the committee cannot be obtained by reason of the disqualification or absence of members thereof, the chair or the executive secretary shall **[may]** request **[that one or more alternate members act as]** ~~the appropriate appointing authority or authorities to designate~~ a temporary replacement or replacements. Any such temporary replacement shall have **[been appointed by the same appointing authority and have]** the same qualifications as the member replaced.

(c) The committee shall designate the chair and vice-chair of the committee. The vice-chair shall act as chair in the absence of the chair. In the absence of both the chair and the vice-chair, the members present may select one among them to act as temporary chair.

(7) Meetings of the Committee

(a) Meetings of the committee shall be held at the call of the chair, the vice-chair, or the executive secretary or at the written request of three members of the committee.

(b) The committee may, by vote, establish regular or stated meeting dates.

(c) The business of the committee may be transacted by telephone, exchange of correspondence, or other informal poll of members, unless one or more members object; provided, however, that no formal charges shall be instituted or unfavorable action taken against a judge except upon deliberation and the affirmative vote of at least seven members who are physically present at a meeting of the committee.

(8) Annual Report

On or before March 1 of each year, the committee shall prepare a report summarizing its activities during the preceding calendar year. Upon approval of the report by the committee, a copy of the report shall be filed with the Governor, the president of the Senate, the speaker of the House, the chief justice of the supreme court, the chairpersons of the House and Senate Judiciary Committees, and shall be made available to the public.

(9) Powers and Duties of the Committee

The committee shall have the power and the duty:

(a) to consider and investigate the conduct of any judge, as that term is defined in Rule 40(2), within the jurisdiction of this court and may initiate an inquiry on its own motion in accordance with Rule 40(6) or undertake an investigation upon grievance or complaint filed by any person;

(b) to retain counsel as may from time to time be required to properly perform the functions prescribed by the committee, subject to the availability of appropriated funds;

(c) to retain such investigative and other personnel as the committee shall deem necessary, and to select its own office space, which should not be in the facilities of any branch of government, both subject to the availability of appropriated funds;

(d) to dismiss a grievance or complaint when the grievant lacks standing, the committee lacks jurisdiction over the grievance or complaint, the grievance or complaint is insufficient or there is insufficient cause to proceed, or the period of limitations set forth in Rule 40(4)(c) has expired;

(e) to dispose of a grievance or complaint by informal resolution or adjustment prior to the filing of formal charges or after a hearing on formal charges;

(f) to prepare and file a statement of formal charges when appropriate;

(g) to hold a public hearing on a statement of formal charges, during which hearing counsel shall have the burden of establishing by clear and convincing evidence a violation of the Code of Judicial Conduct;

(h) to institute disciplinary proceedings in the supreme court when appropriate;

(i) to educate the public on the general functions and procedures of the Committee.

(10) Attendance at Meetings; Removal of Members

(a) Committee members shall be expected to attend all meetings of the committee. The chair shall be authorized to excuse the attendance of committee members from any meeting for good cause. The chair is authorized to discuss with members whether continued service on the committee is justified when meetings are frequently missed.

(b) The chair, with the concurrence of a majority of the committee, shall be authorized to remove a member **[or alternate member]** for cause, including unexcused or frequent absences or serious violations of the rules governing the committee. Prior to any vote by the committee on removal, the chair shall provide the member **[or alternate member]** with a written statement of the reasons for which ~~the member's~~ **[his or her]** removal is sought. The member **[or alternate member]** shall have the right to file a written response within ten days, copies of which shall be provided to all other members of the committee by the executive secretary. The member **[or alternate member]** shall have the right to attend the meeting at which removal is sought, and to speak prior to the committee's vote. The committee may hold such further proceedings as it deems necessary in its sole discretion prior to voting on removal.

Official Version

RULE 39. COMMITTEE ON JUDICIAL CONDUCT

(1) Authority

Pursuant to the supreme court's constitutional and statutory authority, and to provide for the orderly and efficient administration of the Code of Judicial Conduct, Rule 38 of the Rules of the Supreme Court, there is hereby established a committee on judicial conduct.

(2) Appointment of Committee

(a) The committee on judicial conduct shall consist of eleven members and eleven alternate members. Alternate members may participate in committee proceedings only as specifically provided in this rule.

(1) One member and one alternate member who shall each be an active or retired justice of the superior court; one member and one alternate member who shall each be an active or retired district court judge; and one member and one alternate member who shall each be an active or retired probate court judge, all of whom shall be appointed by the supreme court.

(2) One member and one alternate member who shall each be a clerk of court and who shall be appointed by the supreme court.

(3) One member and one alternate member who shall each be a New Hampshire Bar Association member and who shall be appointed by the president of the New Hampshire Bar Association.

(4) One public member and one alternate public member, who shall not be a judge, attorney, clerk of court, or elected or appointed public official, shall be appointed by the president of the New Hampshire Bar Association.

(5) One public member and one alternate public member], who shall not be a judge, attorney, clerk of court, or elected or appointed public official, shall be appointed by the supreme court.

(6) Two public members and two alternate public members, who shall not be judges, attorneys, clerks of court, or elected or appointed public officials, shall be appointed by the Governor.

(7) One public member and one alternate public member, who shall not be a judge, clerk of court, or attorney, shall be appointed by the president of the Senate.

(8) One public member and one alternate public member, who shall not be a judge, clerk of court, or attorney, shall be appointed by the speaker of the House.

(b) *Committee Address*

The committee address shall be determined by the committee.

(3) *Terms of Office*

(a) The terms of the current members serving on July 1, 2005, shall continue until, and expire at the end of, the dates set forth below. The appointing authority who shall fill any vacancy for each current member is also set forth below.

<u>Current Member</u>	<u>Expiration Date</u>	<u>Appointing Authority</u>
Alfred Catalfo, III, Esquire	July 1, 2005	Bar President (public member position)
Harland W. Eaton	July 1, 2005	Governor
Elizabeth Lown	July 1, 2005	House Speaker
Jay Rosenfield	July 1, 2005	Senate President
Hon. Raymond A. Cloutier	July 1, 2006	Supreme Court (probate court judge position)
Hon. Douglas S. Hatfield	July 1, 2006	Supreme Court (district court judge position)
Wilfred L. Sanders, Esq.	July 1, 2006	Bar President (attorney member position)
Dr. Robert O. Wilson	July 1, 2006	Governor

Hon. Patricia C. Coffey	July 1, 2007	Supreme Court (superior court justice position)
Lawrence W. O'Connell	July 1, 2007	Supreme Court (public member position)
Dana Zucker	July 1, 2007	Supreme Court (clerk of court position)

Each member serving on July 1, 2005, shall continue to serve as a member until his or her successor is appointed. The initial term of the first eleven members appointed after July 1, 2005, which may include appointments of members who were serving on July 1, 2005, shall be for a three-year term.

The initial term of all alternate members appointed shall be for three years.

(b) All terms after the initial appointments set forth in subparagraph (a) shall be for three years.

(c) A member may serve a maximum of three successive terms, all of which commenced after July 1, 2005. After the expiration of the member's third successive term, the member may not again be appointed to the committee, either as a member or as an alternate member, until three years after the date of the member's last day as a member of the committee. An alternate member may serve an unlimited number of terms as an alternate.

(d) If any appointing authority other than the supreme court fails to appoint a member or an alternate member to fill a vacancy for a period of three months following the date upon which notice is sent to the appointing authority informing the appointing authority of the vacancy, the supreme court may appoint a member or alternate member to fill the vacancy. The person appointed shall have the same qualifications as would have been required had the appointing authority filled the vacancy.

(4) *Vacancy and Disqualification*

(a) A vacancy in the office of the committee shall occur

(1) when the term of a member or alternate member expires; provided, however, that such member or alternate member shall continue to serve until his or her successor is appointed; or

(2) when a judge who is a member or alternate member of the committee ceases to hold the office which he or she held at the time of selection; or

(3) when a lawyer ceases to be in good standing in all jurisdictions where admitted to practice law, or is appointed to a judicial office or as a clerk of court; or

(4) when a public member or alternate public member becomes a lawyer, clerk of court, or a judge; or

(5) when a public member or alternate public member appointed by the Governor or the President of the New Hampshire Bar Association becomes an elected or appointed public official; or

(6) when a member or alternate member ceases to be domiciled in New Hampshire; or

(7) when a clerk of court who is a member or alternate member of the committee ceases to hold the office which he or she held at the time of selection; or

(8) when a member or alternate member is removed from office by the committee as provided in paragraph 10; or

(9) when a member or alternate member ceases to hold office by submitting his or her resignation to the committee or otherwise.

(b) A vacancy shall be filled by selection of a successor with the same qualifications as those required for the selection of his or her predecessor in office. A member or alternate member selected to fill a vacancy shall hold office for the unexpired term of his or her predecessor.

(c) No member shall participate in any proceedings before the committee involving his or her own conduct or the conduct of any other member. No alternate member shall participate in any proceedings before the committee involving his or her own conduct.

(d) No member or alternate member shall participate in any proceeding in which his or her impartiality might reasonably be questioned.

(e) Whenever a member is disqualified from participating in a particular proceeding, or is unable to participate by reason of prolonged absence or physical or mental incapacity, an alternate member may be assigned by the chair to participate in any such proceeding or for the

period of any such disability, provided that said alternate member shall have been appointed by the same appointing authority as the member who is being replaced, and shall have the same qualifications as those required for the selection of the member who is being replaced. If, however, due to disqualification or incapacity, there is no alternate member who was appointed by the same appointing authority with the same qualifications who is able to participate, then the chair may assign any other alternate member to participate in the proceeding or for the period of the member's disability.

(5) *Expenses of the Committee and Staff*

(a) The committee's budget shall be a separate PAU within the judicial branch budget. The committee shall prepare its own budget request. The budget request and such additional information as may be requested shall be submitted to the director of the administrative office of the courts for inclusion in the judicial branch budget request in the amounts requested. Expenses approved for payment by the committee shall be paid by the administrative office of the courts from funds appropriated for the judicial conduct committee.

(b) Members and alternate members shall serve without compensation for their services, but shall be reimbursed for necessary expenses incurred in the performance of their duties, subject to the availability of funds.

(c) The committee shall appoint an executive secretary and such other persons as may be necessary to assist the committee in its work. The executive secretary shall perform the duties and responsibilities prescribed by this rule and Supreme Court Rule 40, and such other duties and responsibilities as the committee may determine from time to time. He or she shall notify the appropriate appointing authority whenever a member's or alternate member's term expires or a vacancy in the office of the committee otherwise occurs. He or she shall receive all grievances, information, and inquiries, and process the same under the direction and supervision of the committee. The executive secretary shall maintain the committee's records, maintain statistics concerning the operation of the committee, and prepare an annual report of the committee's activities for presentation to the committee. He or she shall coordinate investigations ordered by the committee, and ensure that they are conducted discreetly and with dispatch. Subject to the direction and control of the committee, and subject to the availability of appropriated funds, the executive secretary shall have charge of the disbursement of expense funds. Generally, the executive secretary shall supervise the work of other personnel employed by the committee, direct the activities

of the committee's office, and endeavor to keep members of the committee properly informed about its business.

(d) The committee may employ counsel. The duties of counsel shall be determined by the committee.

(e) The committee may employ such private investigators, experts and other personnel as the committee in its discretion deems necessary for the efficient discharge of its duties.

(f) The committee shall select its own office space, which should not be in the facilities of any branch of government.

(6) *Quorum and Chairperson*

(a) A quorum for the transaction of business by the committee shall be six members; provided, however, that no formal charges shall be instituted or unfavorable action taken against a judge except upon the affirmative vote of at least seven members. Except as otherwise provided in this rule or in Supreme Court Rule 40, no act of the committee shall be valid unless concurred in by six of its members.

Members of the committee may participate in a meeting of the committee by means of a conference telephone or similar communications equipment, provided all persons participating in the meeting can hear each other. Participation by these means shall constitute presence in person at a meeting. These procedures shall not be used for hearings.

(b) If a quorum of the committee cannot be obtained by reason of the disqualification or absence of members thereof, the chair or the executive secretary may request that one or more alternate members act as a temporary replacement or replacements. Any such temporary replacement shall have been appointed by the same appointing authority and have the same qualifications as the member replaced.

(c) The committee shall designate the chair and vice-chair of the committee. The vice-chair shall act as chair in the absence of the chair. In the absence of both the chair and the vice-chair, the members present may select one among them to act as temporary chair.

(7) Meetings of the Committee

(a) Meetings of the committee shall be held at the call of the chair, the vice-chair, or the executive secretary or at the written request of three members of the committee.

(b) The committee may, by vote, establish regular or stated meeting dates.

(c) The business of the committee may be transacted by telephone, exchange of correspondence, or other informal poll of members, unless one or more members object; provided, however, that no formal charges shall be instituted or unfavorable action taken against a judge except upon deliberation and the affirmative vote of at least seven members who are physically present at a meeting of the committee.

(8) Annual Report

On or before March 1 of each year, the committee shall prepare a report summarizing its activities during the preceding calendar year. Upon approval of the report by the committee, a copy of the report shall be filed with the Governor, the president of the Senate, the speaker of the House, the chief justice of the supreme court, the chairpersons of the House and Senate Judiciary Committees, and shall be made available to the public.

(9) Powers and Duties of the Committee

The committee shall have the power and the duty:

(a) to consider and investigate the conduct of any judge, as that term is defined in Rule 40(2), within the jurisdiction of this court and may initiate an inquiry on its own motion in accordance with Rule 40(6) or undertake an investigation upon grievance or complaint filed by any person;

(b) to retain counsel as may from time to time be required to properly perform the functions prescribed by the committee, subject to the availability of appropriated funds;

(c) to retain such investigative and other personnel as the committee shall deem necessary, and to select its own office space, which should not be in the facilities of any branch of government, both subject to the availability of appropriated funds;

(d) to dismiss a grievance or complaint when the grievant lacks standing, the committee lacks jurisdiction over the grievance or complaint, the grievance or complaint is insufficient or there is insufficient cause to proceed, or the period of limitations set forth in Rule 40(4)(c) has expired;

(e) to dispose of a grievance or complaint by informal resolution or adjustment prior to the filing of formal charges or after a hearing on formal charges;

(f) to prepare and file a statement of formal charges when appropriate;

(g) to hold a public hearing on a statement of formal charges, during which hearing counsel shall have the burden of establishing by clear and convincing evidence a violation of the Code of Judicial Conduct;

(h) to institute disciplinary proceedings in the supreme court when appropriate;

(i) to educate the public on the general functions and procedures of the Committee.

(10) Attendance at Meetings; Removal of Members

(a) Committee members shall be expected to attend all meetings of the committee. The chair shall be authorized to excuse the attendance of committee members from any meeting for good cause. The chair is authorized to discuss with members whether continued service on the committee is justified when meetings are frequently missed.

(b) The chair, with the concurrence of a majority of the committee, shall be authorized to remove a member or alternate member for cause, including unexcused or frequent absences or serious violations of the rules governing the committee. Prior to any vote by the committee on removal, the chair shall provide the member or alternate member with a written statement of the reasons for which his or her removal is sought. The member or alternate member shall have the right to file a written response within ten days, copies of which shall be provided to all other members of the committee by the executive secretary. The member or alternate member shall have the right to attend the meeting at which removal is sought, and to speak prior to the committee's vote. The committee may hold such further proceedings as it deems necessary in its sole discretion prior to voting on removal.

APPENDIX E

Amend the definition of "Judge" in Supreme Court Rule 40(2) as follows:

Unofficial Annotated Version

Judge - This term includes: (1) a full-time or part-time judge of the supreme, superior, district, and probate courts; (2) a full-time **[or part-time]** marital master; (3) a referee or other master; (4) a court stenographer**[, monitor]** or reporter, a clerk of court or deputy clerk, including a register of probate or deputy register, and any person performing the duties of a clerk or register. Not everyone who is a "judge" as defined herein is bound by every canon of the Code of Judicial Conduct -- the Code of Judicial Conduct applies to a judge to the extent provided in Supreme Court Rule 38.

Official Version

Judge - This term includes: (1) a full-time or part-time judge of the supreme, superior, district, and probate courts; (2) a full-time or part-time marital master; (3) a referee or other master; (4) a court stenographer, monitor or reporter, a clerk of court or deputy clerk, including a register of probate or deputy register, and any person performing the duties of a clerk or register. Not everyone who is a "judge" as defined herein is bound by every canon of the Code of Judicial Conduct -- the Code of Judicial Conduct applies to a judge to the extent provided in Supreme Court Rule 38.

APPENDIX F

Adopt technical amendments to Supreme Court Rule 42(13), so that said rule, as amended, shall state as follows:

Unofficial Annotated Version

(13) An applicant who is domiciled in the United States, is of the age of 18 years, and meets the following requirements may, upon motion, be admitted to the practice of law after taking and passing a variant of the New Hampshire bar examination to consist of rigorous, repeated and comprehensive evaluation of legal skills and abilities, the criteria for which will be established by the supreme court, and which will amount to more than the twelve hours of testing required for the conventional bar examination. The applicant shall:

(a) Have, ~~within the year immediately preceding~~ **[prior to admission, and within one year of]** the date upon which the motion is filed, successfully completed, to the satisfaction of the board of bar examiners, the **[Daniel]** Webster Scholar **[Honors]** Program offered at the Franklin Pierce Law Center in Concord, New Hampshire, and ~~be~~ **[been]** certified by the board of bar examiners as satisfying this requirement;

[(b) Prior to admission, produce evidence that the Multistate Professional Responsibility Examination has been satisfactorily completed;]

~~(b)~~ **[(c)]** Establish that the applicant is currently a member in good standing in all jurisdictions where admitted, if any;

~~(c)~~ **[(d)]** Establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any jurisdiction;

~~(d)~~ **[(e)]** Establish that the applicant possesses the character and fitness to practice law in New Hampshire; and

~~(e)~~ **[(f)]** Designate the clerk of the supreme court for service of process.

Official Version

(13) An applicant who is domiciled in the United States, is of the age of 18 years, and meets the following requirements may, upon motion, be admitted to the practice of law after taking and passing a variant of the New Hampshire bar examination to consist of rigorous, repeated and comprehensive evaluation of legal skills and abilities, the criteria for which will be established by the supreme court, and which will amount to more than the twelve hours of testing required for the conventional bar examination. The applicant shall:

(a) Have, prior to admission, and within one year of the date upon which the motion is filed, successfully completed, to the satisfaction of the board of bar examiners, the Daniel Webster Scholar Honors Program offered at the Franklin Pierce Law Center in Concord, New Hampshire, and been certified by the board of bar examiners as satisfying this requirement;

(b) Prior to admission, produce evidence that the Multistate Professional Responsibility Examination has been satisfactorily completed;

(c) Establish that the applicant is currently a member in good standing in all jurisdictions where admitted, if any;

(d) Establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any jurisdiction;

(e) Establish that the applicant possesses the character and fitness to practice law in New Hampshire; and

(f) Designate the clerk of the supreme court for service of process.

APPENDIX G

Adopt a **new** Supreme Court Rule 42B as follows. **Note:** The Character and Fitness Committee Comments set forth below are included for informational purposes only – they are not part of Rule 42B and they have not been adopted by the supreme court.

Official Version

RULE 42B. CHARACTER AND FITNESS STANDARDS

(I) **Admission a privilege, not a right.**

The right to practice law is not one of the inherent rights of every citizen, as is the right to carry on an ordinary trade or business. It is a peculiar privilege granted and continued only to those who demonstrate special fitness in intellectual attainment and in moral character.

(II) **Requirement to establish character and fitness.**

All persons who desire to be admitted to practice law shall be required to establish their moral character and fitness to the satisfaction of the Standing Committee on Character and Fitness of the Supreme Court of New Hampshire in advance of such admission.

(III) **Burden of proof on the applicant.**

Any person who seeks admission to practice law in the State of New Hampshire shall at all times have the burden of proving his or her good moral character and fitness before the Committee on Character and Fitness of the Supreme Court of New Hampshire. This burden requires both the production of evidence and the persuasion of the Committee and Court as to the applicant's good moral character and fitness.

(IV) **Proof by clear and convincing evidence.**

The applicant must prove his or her good moral character and fitness by clear and convincing evidence.

(V) **Doubts resolved in favor of protecting the public.**

Any doubt concerning an applicant's character and fitness shall be resolved in favor of protecting the public by denying admission to the applicant.

(VI) **Positive Characteristics To Be Considered.**

The Committee will consider positive characteristics in evaluating an applicant's character and fitness to practice law including:

- (1) The ability to reason, recall complex factual information and integrate that information with complex legal theories;
- (2) The ability to communicate with clients, attorneys, courts, and others with a high degree of organization and clarity;
- (3) The ability to use good judgment on behalf of clients and in conducting one's professional business;
- (4) The ability to avoid acts which exhibit disregard for the rights or welfare of others;
- (5) The ability to act diligently and reliably in fulfilling one's obligations to clients, attorneys, courts, and others;
- (6) The ability to use good judgment in financial dealings on behalf of oneself, clients, and others; and
- (7) The ability to comply with deadlines and time constraints.

(VII) **Grounds to deny admission.**

Any of the following may be grounds for the Committee to recommend denial of admission for lack of character or fitness:

- (1) Insufficient positive characteristics set forth in section (VI) above.
- (2) Acts Involving Dishonesty, Fraud, Deceit or Misrepresentation.

Character and Fitness Committee Comment

“In order to maintain public confidence in the bar and trust among members of the bar, attorneys must be honest in their dealings.” Application of T.J.S., 141 N.H. 697, 702 (1997). An applicant’s record of conduct should demonstrate the honesty which future clients, adversaries, courts and others have a right to expect of a lawyer.

It is irrelevant whether the applicant has been charged with and/or convicted of a crime as result of such an act. It is also irrelevant whether the act was committed in the applicant’s personal life or in the course of an occupation or employment.

(3) False or Misleading Statements or Omissions in the Application Process.

Character and Fitness Committee Comment

Much of the information that the Committee uses in assessing an applicant’s character and fitness is contained in the Petition and Questionnaire for Admission to the Bar of New Hampshire. The information in the Petition and Questionnaire is also one of the sources of information used for requesting further information from the applicant and in conducting further investigation. As such, it is crucial that applicants be absolutely candid and complete in disclosing the information requested in the form or in response to further inquiries by the Committee.

(4) Lack of Candor in Dealing with the Committee or Staff.

Character and Fitness Committee Comment

As with false and misleading statements or omissions during the application process, the failure of an applicant to deal with the Committee or its staff in a candid manner may result in recommendation of denial of admission.

(5) Failure to Cooperate with or to Provide Information to the Committee or its Staff.

Character and Fitness Committee Comment

Because the burden of proving good moral character and fitness is on the applicant, the Committee and its staff often require applicants to provide further information and/or documentation concerning matters of concern to them. Failure to provide such information and/or to cooperate with the Committee and its staff in their efforts to fully investigate matters may make it impossible for the Committee to complete its task of assessing the applicant’s

character and fitness and may thereby result in a recommendation to deny admission.

(6) Criminal Acts.

Character and Fitness Committee Comment

Conduct which is criminal in nature which the Committee finds to have occurred may be grounds for recommending denial of admission whether or not the conduct results in a prosecution and conviction and even though the arrest and/or conviction for the conduct have been annulled.

(7) Other Unlawful Conduct which Demonstrates a Disrespect for or Unwillingness to Obey the Law.

Character and Fitness Committee Comment

The New Hampshire Supreme Court in Application of Appell, 116 N.H. 400 (1976), denied admission to an applicant and upheld the findings of a single justice who had determined that the applicant's "violations of various statutes and regulations indicate at best a careless failure to determine the legality of his actions and at worst an arrogant disregard of the law." Thus, when the Committee finds that an applicant has committed acts, which are not criminal, but which are unlawful and demonstrate disrespect for the law, the Committee may determine that the applicant does not possess the necessary moral character for admission to the bar.

(8) Violation of a Court Order.

Character and Fitness Committee Comment

Respect for the law and obedience of court orders and directives are crucial to the operation of the judicial system. Violations of court orders and/or directives, either in the applicant's professional or personal life, may be grounds for a recommendation of the denial of admission.

(9) Abuse of the Judicial Process.

Character and Fitness Committee Comment

Applicants are asked to disclose on their applications all judicial and administrative proceedings to which they have been a party. The Committee quite often requests applicants to provide detailed information concerning those proceedings. Applicants who abuse the judicial process in either their personal affairs or in professional matters may be deemed to put the public at risk of continuing such behavior if they are admitted. It is irrelevant whether the courts in those matters have made judicial

determinations that such abuse has occurred, or whether sanctions have been imposed for such abuse.

(10) Academic Misconduct - Plagiarism and Cheating.

Character and Fitness Committee Comment

As part of the approval process, the Committee requests law school deans to complete a questionnaire concerning each applicant. The Committee also requires applicants to disclose whether they have been dropped, suspended, placed on probation, expelled or requested to resign from any school, college, university or law school, or requested or advised by any such school or institution to discontinue their studies therein. If plagiarism and/or cheating is disclosed, the Committee conducts a further inquiry to determine the seriousness of the matter.

(11) Financial Irresponsibility.

Character and Fitness Committee Comment

An applicant must demonstrate that he/she is acting responsibly with respect to his or her financial obligations. Being in debt or unable to stay current with debts is not in itself disqualifying. However, the Committee expects an applicant with debt to keep each creditor informed of a current address, to make payment when the applicant is able to, and when unable to pay debts, to make reasonable efforts to work out settlements and/or repayment plans.

A declaration of bankruptcy is not a ground for recommending denial of admission. However, bankruptcy petition are generally scrutinized by the Committee. Any false statements, admissions or acts involving dishonesty, fraud, deceit or misrepresentation in connection with the filing of bankruptcy may be grounds for a recommendation of denial of admission. Further, the facts and circumstances surrounding a bankruptcy may also bear on the issue of whether the applicant is able to handle his or her affairs.

(12) Mental Disorders which Impair the Ability to Practice Law.

Character and Fitness Committee Comment

A mental disorder that impairs an applicant's ability to practice law may be disqualifying. Should the Committee become aware of a mental disorder which has the potential to impair an applicant's ability to practice law, it will ask for details of any treatment, and may ask treating or independent professionals for reports as to whether the disorder will impair the applicant's ability to practice law in a competent and professional manner.

(13) Alcohol or Drug Addiction or Abuse.

Character and Fitness Committee Comment

An applicant who has become addicted to alcohol or other drugs or is using illegal drugs, will not be approved by the Committee if he/she is still currently using the substance or if the Committee believes that there is an undue risk that the applicant will begin using the substance after admission to the bar. Applicants who have been addicted to alcohol or other drugs are expected to demonstrate a meaningful period of non-use and to have developed support and/or coping mechanisms, either external or internal, which make it unlikely that the applicant will again use the addictive substance.

Applicants who have been addicted to or abused alcohol or drugs are generally expected to be free of alcohol use or drug abuse for at least 1 year in order to be approved.

(14) Inability to Handle One's Own Affairs.

Character and Fitness Committee Comment

The practice of law often involves being entrusted with the affairs of clients. The inability of an applicant to handle his/her own affairs in a responsible manner may be grounds for finding that such an applicant does not possess the requisite fitness to engage in the practice of law.

(VIII) **Causes for further inquiry.**

In addition to any of the above, any of the following are cause for further inquiry (but not in themselves disqualifying) before the Character and Fitness Committee decides whether the applicant possesses the character and fitness to practice law:

- (1) Denial of admission to the bar in another jurisdiction on character and fitness grounds;
- (2) Disciplinary action by a lawyer disciplinary agency or other professional disciplinary agencies of any jurisdiction;
- (3) Employment termination due to alleged misconduct;
- (4) Receipt of negative references;
- (5) Complaints of domestic violence against the applicant;

- (6) Other than honorable military discharge;
- (7) Bankruptcy;
- (8) Debt obligations in default.

(IX) **Determination of disqualification.**

The Character and Fitness Committee must first determine whether any conduct or condition of the applicant is disqualifying.

(X) **When is conduct or condition disqualifying.**

The misconduct or condition is disqualifying when it is so serious or significant that denying admission is necessary to protect the public and maintain public confidence in the bar.

Character and Fitness Committee Comment

In the character and fitness review process, the need to protect the public and maintain public confidence in the bar always overrides any concern that denying admission to an applicant who has successfully completed law school and passed the bar examination may seem unfair.

(XI) **Cumulative effect of events of misconduct.**

The Committee may find the cumulative effect of two or more events of misconduct disqualifying even though no one of the events alone would be disqualifying.

(XII) **Determination of current character and fitness.**

If the Character and Fitness Committee finds any conduct or condition to be disqualifying, it must then determine whether the current character and fitness of the applicant qualifies the applicant for admission. It is the Committee's task to determine whether the applicant is sufficiently rehabilitated to remove the serious taint of the applicant's prior unfitness.

(XIII) **Factors considered.**

The following factors, although not inclusive, may be considered when determining whether an applicant has demonstrated sufficient rehabilitation:

- (1) The nature of the act of misconduct, including whether it involved moral turpitude, whether there were aggravating or mitigating circumstances, and whether the activity was an isolated event or part of a pattern.
- (2) The age and education of the applicant at the time of the act of misconduct and the age and education of the applicant at the present time.
- (3) The length of time that has passed between the act of misconduct and the present, absent any involvement in any further acts of moral turpitude. The amount of time and the extent of rehabilitation will be dependent upon the nature and seriousness of the act of misconduct under consideration.
- (4) Restitution to any person who has suffered monetary losses through related acts or omissions of the applicant.
- (5) Expungement of a conviction.
- (6) Successful completion or early discharge from probation or parole.
- (7) Abstinence from the use of controlled substances or alcohol if the specific act of misconduct was attributable in part to the use of a controlled substance or alcohol. Abstinence may be demonstrated by, but is not necessarily limited to, enrolling in and complying with a self-help or professional treatment program.
- (8) Evidence of remission if the specific act of misconduct was attributable in part to a medically recognized mental disease, disorder or illness. Evidence of remission may include, but is not limited to, seeking professional assistance and complying with the treatment program prescribed by the professional and submission of letters from the psychiatrist/psychologist verifying that the medically recognized mental disease, disorder or illness is in remission.
- (9) Payment of the fine imposed in connection with any criminal conviction.
- (10) Correction of behavior responsible in some degree for the act of misconduct.

(11) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

(12) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(13) Change in attitude from that which existed at the time of the act of misconduct in question as evidenced by any or all of the following:

(a) Statements of the applicant.

(b) Statements from family members, friends, or other persons familiar with the applicant's previous conduct and with subsequent attitudes and behavioral patterns.

(c) Statements from probation or parole officers or law enforcement officials as to the applicant's social adjustments.

(d) Statements from persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(XIV) **Degree of rehabilitation.**

The more serious the misconduct, the greater the showing of rehabilitation that will be required.

Character and Fitness Committee Comment

For applicants who have committed a criminal offense that would disqualify them from holding a license or certificate to practice another profession in this state, the burden of proving sufficient rehabilitation is extraordinarily difficult.

(XV) **Period of time of rehabilitation.**

An applicant who has engaged in disqualifying misconduct in the past needs to show that he or she is no longer the same person who behaved so poorly in the past and needs to behave in an exemplary fashion for a meaningful period of time.

(XVI) **Recognition of disqualifying conduct.**

Establishing sufficient rehabilitation will usually require the applicant to recognize, appreciate, show insight into, and have genuine remorse for the seriousness of his or her disqualifying conduct. Attempts to deny, rationalize, minimize or explain away disqualifying past behavior will usually result in the Committee finding insufficient rehabilitation.

(XVII) **When is rehabilitation sufficient.**

Rehabilitation is sufficient when the applicant has established from all the facts that the public interest will not be jeopardized by his or her admission.

APPENDIX H

Amend Supreme Court Rule 47 as follows:

Unofficial Annotated Version

RULE 47. COUNSEL FEES AND EXPENSES -- INDIGENT CRIMINAL CASES

The provisions of this rule shall apply only to preparation for and proceedings in all courts in which assigned counsel is appointed to represent indigent criminal defendants.

(1) *Itemization of Bills.* All bills related to fees and expenses must be itemized as to the time spent and expenses incurred on each case, and there shall be no separate charge for overhead. **[A copy of the Notice of Appointment of Counsel order on appointment or other supporting document must be attached to the bill with each submission.]**

(2) *Fees.* Maximum compensation is limited as follows:

(a) Time properly chargeable to case: \$60 per hour. The paralegal hourly rate shall not exceed \$35.00 and shall be included with fees of counsel for the purposes of determining the maximum fee on any case. Travel time is not a compensable event unless expressly authorized by the court in advance for exceptional circumstances.

(b) Maximum fee per day (for all cases): \$400.

(c) Maximum fee for misdemeanors: \$1,000.

(d) Maximum fee for felonies: \$3,000.

(e) Maximum fee for homicides under RSA 630:1-2: \$15,000.

(f) Maximum fee for Supreme Court appeal: \$1,500.

Only upon an express, written finding of good cause and exceptional circumstances by the court will the maximum fees be exceeded or will additional fees be authorized. All petitions to exceed the maximum fee guidelines must be approved prior to the guidelines being exceeded; provided, however, that the court may waive the requirement for prior approval when justice so requires.

When counsel represents more than one client on any particular day, the hours spent shall be allocated accordingly. Representation of more than one client on the same day and in the same court shall be noted on the bills submitted. All bills shall be reviewed by the judge who presided over the case, if practicable.

When assigned counsel is appointed in district court, that counsel shall continue as counsel of record for all purposes (such as motions to reduce bail, waiver of indictments, etc.) until and unless new counsel is appointed by superior court. The appointment of counsel shall occur in accordance with RSA 604-A:2, II. The public defender shall be appointed if that office is available. In the event that the public defender program is not available, the appointment of a contract attorney shall occur, if such an attorney is available. Lastly, in the event that neither the public defender nor a contract attorney is available, the appointment of a qualified attorney under RSA 604-A:2, I, shall occur.

The adequacy of the rates prescribed by this rule may, upon request of the supreme court, be reviewed periodically by the advisory committee on rules.

(3) *Expenses - Reimbursable.* Investigative, expert, or other necessary services may be compensated only upon a finding of necessity and reasonableness by a justice of the appropriate court in accordance with RSA 604-A:6, made prior to said expense being incurred.

(a) Except for those services for which rates are established by the supreme court, the presiding justice may consider, but shall not be bound by, the prevailing rates or any rates established by a licensing agency or professional association in approving fees for services specified above.

(b) Rates for stenographers and deposition services shall be established by the supreme court. The cost of copies of depositions and transcripts shall be fifty cents (.50) per page.

(c) Rates for the services of interpreters for all parties and the court shall be established by the supreme court.

(d) No cost for investigative, expert, or other necessary services as initially approved may be exceeded prior to a subsequent finding of necessity by a justice of the appropriate court.

(e) All bills for investigative, expert, or other necessary services shall be reviewed by the judge who presided over the case, if practicable.

(f) Attorneys shall be reimbursed for the mileage expenses incurred in representing their client at the ~~rate currently paid to state employees~~ **[standard mileage reimbursement rate currently allowed by the Internal Revenue Service. Requests for reimbursement of mileage expenses shall specify the actual number of miles traveled].**

(g) The expense of telephone calls shall not be reimbursed.

(h) In cases appealed to the supreme court, attorneys shall be reimbursed for the actual reasonable costs (not including labor) of reproducing and binding the notice of appeal or other appeal document, any appendix and briefs, whether done in-house or by an outside printer.

(i) No reimbursement will be paid for overhead expenses including photocopies (other than as provided in subdivision (3)(h) of this rule), postage, fax and secretarial services.

[(4) *Deadline for Filing Bills with Court.* All bills related to fees and expenses must be submitted no later than sixty days after the close of the case. The court may allow late filing for good cause shown, when justice so requires.]

NOTE: Appointed counsel for witnesses is covered under Rule 48 of the Supreme Court Rules.

Official Version

RULE 47. COUNSEL FEES AND EXPENSES -- INDIGENT CRIMINAL CASES

The provisions of this rule shall apply only to preparation for and proceedings in all courts in which assigned counsel is appointed to represent indigent criminal defendants.

(1) *Itemization of Bills.* All bills related to fees and expenses must be itemized as to the time spent and expenses incurred on each case, and there shall be no separate charge for overhead. A copy of the Notice of Appointment of Counsel order on appointment or other supporting document must be attached to the bill with each submission.

(2) *Fees.* Maximum compensation is limited as follows:

(a) Time properly chargeable to case: \$60 per hour. The paralegal hourly rate shall not exceed \$35.00 and shall be included with fees of counsel for the purposes of determining the maximum fee on any case. Travel time is not a compensable event unless expressly authorized by the court in advance for exceptional circumstances.

(b) Maximum fee per day (for all cases): \$400.

(c) Maximum fee for misdemeanors: \$1,000.

(d) Maximum fee for felonies: \$3,000.

(e) Maximum fee for homicides under RSA 630:1-2: \$15,000.

(f) Maximum fee for Supreme Court appeal: \$1,500.

Only upon an express, written finding of good cause and exceptional circumstances by the court will the maximum fees be exceeded or will additional fees be authorized. All petitions to exceed the maximum fee guidelines must be approved prior to the guidelines being exceeded; provided, however, that the court may waive the requirement for prior approval when justice so requires.

When counsel represents more than one client on any particular day, the hours spent shall be allocated accordingly. Representation of more than one client on the same day and in the same court shall be noted on the bills submitted. All bills shall be reviewed by the judge who presided over the case, if practicable.

When assigned counsel is appointed in district court, that counsel shall continue as counsel of record for all purposes (such as motions to reduce bail, waiver of indictments, etc.) until and unless new counsel is appointed by superior court. The appointment of counsel shall occur in accordance with RSA 604-A:2, II. The public defender shall be appointed if that office is available. In the event that the public defender program is not available, the appointment of a contract attorney shall occur, if such an attorney is available. Lastly, in the event that neither the public defender nor a contract attorney is available, the appointment of a qualified attorney under RSA 604-A:2, I, shall occur.

The adequacy of the rates prescribed by this rule may, upon request of the supreme court, be reviewed periodically by the advisory committee on rules.

(3) *Expenses - Reimbursable.* Investigative, expert, or other necessary services may be compensated only upon a finding of necessity and reasonableness by a justice of the appropriate court in accordance with RSA 604-A:6, made prior to said expense being incurred.

(a) Except for those services for which rates are established by the supreme court, the presiding justice may consider, but shall not be bound by, the prevailing rates or any rates established by a licensing agency or professional association in approving fees for services specified above.

(b) Rates for stenographers and deposition services shall be established by the supreme court. The cost of copies of depositions and transcripts shall be fifty cents (.50) per page.

(c) Rates for the services of interpreters for all parties and the court shall be established by the supreme court.

(d) No cost for investigative, expert, or other necessary services as initially approved may be exceeded prior to a subsequent finding of necessity by a justice of the appropriate court.

(e) All bills for investigative, expert, or other necessary services shall be reviewed by the judge who presided over the case, if practicable.

(f) Attorneys shall be reimbursed for the mileage expenses incurred in representing their client at the standard mileage reimbursement rate currently allowed by the Internal Revenue Service. Requests for reimbursement of mileage expenses shall specify the actual number of miles traveled.

(g) The expense of telephone calls shall not be reimbursed.

(h) In cases appealed to the supreme court, attorneys shall be reimbursed for the actual reasonable costs (not including labor) of reproducing and binding the notice of appeal or other appeal document, any appendix and briefs, whether done in-house or by an outside printer.

(i) No reimbursement will be paid for overhead expenses including photocopies (other than as provided in subdivision (3)(h) of this rule), postage, fax and secretarial services.

(4) *Deadline for Filing Bills with Court.* All bills related to fees and expenses must be submitted no later than sixty days after the close of the case. The court may allow late filing for good cause shown, when justice so requires.

NOTE: Appointed counsel for witnesses is covered under Rule 48 of the Supreme Court Rules.

APPENDIX I

Amend Supreme Court Rule 48 as follows:

Unofficial Annotated Version

RULE 48. COUNSEL FEES AND EXPENSES -- OTHER INDIGENT CASES

The provisions of this rule shall apply only to preparation for and proceedings in all courts in which counsel is appointed to represent indigent persons, other than criminal defendants, and indigent witnesses in appropriate circumstances. This rule refers to, but is not limited to, juvenile cases in the district court, guardianships under RSA chapter 464-A, termination of parental rights (TPR) under RSA chapter 170-C, and involuntary admissions under RSA chapter 135-C in the probate court and district court.

(1) *Itemization of Bills.* All bills related to fees and expenses must be itemized as to the time spent and expenses incurred on each case, and there shall be no separate charge for overhead. **[A copy of the Notice of Appointment of Counsel order on appointment or other supporting document must be attached to the bill with each submission.]**

(2) *Fees.* Maximum compensation is limited as follows:

(a) Time properly chargeable to case: \$60 per hour. The paralegal hourly rate shall not exceed \$35.00 and shall be included with fees of counsel for the purposes of determining the maximum fee on any case. Travel time is not a compensable event unless expressly authorized by the court in advance for exceptional circumstances.

(b) Maximum fee per day (for all cases): \$400.

(c) Maximum fee for all juvenile cases pursuant to RSA chapters 169-B, C, and D: \$1,200.

(d) De novo appeal of juvenile cases pursuant to RSA chapters 169-B, C, and D: \$1,000.

(e) Maximum fee for guardianships under RSA chapter 464-A: \$600.

(f) Maximum fee for annual review hearings for guardianships: \$200.

(g) Maximum fee for TPR cases pursuant to RSA chapter 170-C: \$1,200.

(h) Maximum fee for involuntary admissions under RSA chapter 135-C: \$400.

(i) Appeals to the supreme court in all juvenile cases and any matters within the subject matter jurisdiction of the probate court: \$1,500.

(j) Maximum fee for court review hearings of juvenile cases pursuant to RSA 169-B and D: \$180.

Only upon express, written finding for good cause and exceptional circumstances by the court will the maximum fees be exceeded or will additional fees be authorized. All petitions to exceed the maximum fee guidelines must be approved prior to the guidelines being exceeded; provided, however, that the court may waive the requirement for prior approval when justice so requires.

When counsel represents more than one client on any particular day, the hours spent shall be allocated accordingly. Representation of more than one client on the same day and in the same court shall be noted on the bills submitted. All bills shall be reviewed by the judge who presided over the case, if practicable.

The adequacy of the rates prescribed by this rule may, upon request of the supreme court, be reviewed periodically by the advisory committee on rules.

(3) *Expenses - Reimbursable.* Investigative, expert, or other necessary services may be compensated only upon a finding of necessity and reasonableness by a justice of the appropriate court, made prior to said expense being incurred.

(a) Except for those services for which rates are established by the supreme court, the presiding justice may consider, but shall not be bound by, the prevailing rates or any rates established by a licensing agency or professional association in approving fees for services specified above.

(b) Rates for stenographers and deposition services shall be established by the supreme court. The cost of copies of depositions and transcripts shall be fifty cents (.50) per page.

(c) Rates for the services of interpreters for all parties and the court shall be established by the supreme court.

(d) No cost for investigative, expert, or other necessary services as initially approved may be exceeded prior to a subsequent finding of necessity by a justice of the appropriate court.

(e) All bills for investigative, expert, or other necessary services shall be reviewed by the judge who presided over the case, if practicable.

(f) Attorneys shall be reimbursed for the mileage expenses incurred in representing their client at the ~~rate currently paid to state employees~~ **[standard mileage reimbursement rate currently allowed by the Internal Revenue Service. Requests for reimbursement of mileage expenses shall specify the actual number of miles traveled].**

(g) The expense of telephone calls shall not be reimbursed.

(h) In cases appealed to the supreme court, attorneys shall be reimbursed for the actual reasonable costs (not including labor) of reproducing and binding the notice of appeal or other appeal document, any appendix and briefs, whether done in-house or by an outside printer.

(i) No reimbursement will be paid for overhead expenses including photocopies (other than as provided in subdivision (3)(h) of this rule), postage, fax and secretarial services.

[(4) *Deadline for Filing Bills with Court.* All bills related to fees and expenses must be submitted no later than sixty days after the close of the case. The court may allow late filing for good cause shown, when justice so requires.]

Official Version

RULE 48. COUNSEL FEES AND EXPENSES -- OTHER INDIGENT CASES

The provisions of this rule shall apply only to preparation for and proceedings in all courts in which counsel is appointed to represent

indigent persons, other than criminal defendants, and indigent witnesses in appropriate circumstances. This rule refers to, but is not limited to, juvenile cases in the district court, guardianships under RSA chapter 464-A, termination of parental rights (TPR) under RSA chapter 170-C, and involuntary admissions under RSA chapter 135-C in the probate court and district court.

(1) *Itemization of Bills.* All bills related to fees and expenses must be itemized as to the time spent and expenses incurred on each case, and there shall be no separate charge for overhead. A copy of the Notice of Appointment of Counsel order on appointment or other supporting document must be attached to the bill with each submission.

(2) *Fees.* Maximum compensation is limited as follows:

(a) Time properly chargeable to case: \$60 per hour. The paralegal hourly rate shall not exceed \$35.00 and shall be included with fees of counsel for the purposes of determining the maximum fee on any case. Travel time is not a compensable event unless expressly authorized by the court in advance for exceptional circumstances.

(b) Maximum fee per day (for all cases): \$400.

(c) Maximum fee for all juvenile cases pursuant to RSA chapters 169-B, C, and D: \$1,200.

(d) De novo appeal of juvenile cases pursuant to RSA chapters 169-B, C, and D: \$1,000.

(e) Maximum fee for guardianships under RSA chapter 464-A: \$600.

(f) Maximum fee for annual review hearings for guardianships: \$200.

(g) Maximum fee for TPR cases pursuant to RSA chapter 170-C: \$1,200.

(h) Maximum fee for involuntary admissions under RSA chapter 135-C: \$400.

(i) Appeals to the supreme court in all juvenile cases and any matters within the subject matter jurisdiction of the probate court: \$1,500.

(j) Maximum fee for court review hearings of juvenile cases pursuant to RSA 169-B and D: \$180.

Only upon express, written finding for good cause and exceptional circumstances by the court will the maximum fees be exceeded or will additional fees be authorized. All petitions to exceed the maximum fee guidelines must be approved prior to the guidelines being exceeded; provided, however, that the court may waive the requirement for prior approval when justice so requires.

When counsel represents more than one client on any particular day, the hours spent shall be allocated accordingly. Representation of more than one client on the same day and in the same court shall be noted on the bills submitted. All bills shall be reviewed by the judge who presided over the case, if practicable.

The adequacy of the rates prescribed by this rule may, upon request of the supreme court, be reviewed periodically by the advisory committee on rules.

(3) *Expenses - Reimbursable.* Investigative, expert, or other necessary services may be compensated only upon a finding of necessity and reasonableness by a justice of the appropriate court, made prior to said expense being incurred.

(a) Except for those services for which rates are established by the supreme court, the presiding justice may consider, but shall not be bound by, the prevailing rates or any rates established by a licensing agency or professional association in approving fees for services specified above.

(b) Rates for stenographers and deposition services shall be established by the supreme court. The cost of copies of depositions and transcripts shall be fifty cents (.50) per page.

(c) Rates for the services of interpreters for all parties and the court shall be established by the supreme court.

(d) No cost for investigative, expert, or other necessary services as initially approved may be exceeded prior to a subsequent finding of necessity by a justice of the appropriate court.

(e) All bills for investigative, expert, or other necessary services shall be reviewed by the judge who presided over the case, if practicable.

(f) Attorneys shall be reimbursed for the mileage expenses incurred in representing their client at the standard mileage reimbursement rate currently allowed by the Internal Revenue Service. Requests for reimbursement of mileage expenses shall specify the actual number of miles traveled.

(g) The expense of telephone calls shall not be reimbursed.

(h) In cases appealed to the supreme court, attorneys shall be reimbursed for the actual reasonable costs (not including labor) of reproducing and binding the notice of appeal or other appeal document, any appendix and briefs, whether done in-house or by an outside printer.

(i) No reimbursement will be paid for overhead expenses including photocopies (other than as provided in subdivision (3)(h) of this rule), postage, fax and secretarial services.

(4) *Deadline for Filing Bills with Court.* All bills related to fees and expenses must be submitted no later than sixty days after the close of the case. The court may allow late filing for good cause shown, when justice so requires.

APPENDIX J

Amend Supreme Court Rule 48-A as follows:

Unofficial Annotated Version

RULE 48-A. GUARDIANS AD LITEM FEES -- INDIGENT CASES

(1) *Itemization of Bills.* All bills related to fees and expenses must be itemized as to the time spent and expenses incurred on each case, and there shall be no separate charge for overhead. **[A copy of the Notice of Appointment order on appointment or other supporting document must be attached to the bill with each submission.]**

(2) *Fees.* The provisions of this rule shall only apply to proceedings within the original jurisdiction of the district and probate courts, in which guardians ad litem are appointed, and the party responsible for payment is indigent.

Maximum guardian ad litem compensation as authorized by the administrative justice shall be limited as follows:

(a) Time properly chargeable to case: \$60 per hour. Travel time is not a compensable event unless expressly authorized by the court in advance for exceptional circumstances.

(b) Maximum fee per day: \$400.

(c) Maximum fee for abuse and neglect cases through conclusion of dispositional hearing pursuant to RSA 169-C:19: \$1000.

(d) Maximum fee for CHINS cases (169-D) or delinquency cases (169-B) through conclusion: \$600.

(e) Maximum fee for court review hearings in guardianship of minor case or abuse and neglect case: \$180.

(f) Maximum fee for TPR case (170-C): \$1,000.

(g) Maximum fee for appeals to the superior court: \$600.

(h) Maximum fee for guardianship of minor cases pursuant to RSA 463: \$1,000.

Only upon express, written finding for good cause and exceptional circumstances by the court will the maximum fees be exceeded or will additional fees be authorized. All petitions to exceed the maximum fee guidelines must be approved prior to the guidelines being exceeded; provided, however, that the court may waive the requirement for prior approval when justice so requires.

When a guardian ad litem represents more than one client on any particular day, the hours spent shall be allocated accordingly. Representation of more than one client on the same day and in the same court shall be noted on the bills submitted. All bills shall be reviewed by the judge who presided over the case, if practicable.

The adequacy of the rates prescribed by this rule may, upon request of the supreme court, be reviewed periodically by the advisory committee on rules.

(3) *Expenses - Reimbursable.* Investigative, expert, or other necessary services may be compensated only upon a finding of necessity and reasonableness by a justice of the appropriate court, made prior to said expense being incurred.

(a) Except for those services for which rates are established by the supreme court, the presiding justice may consider, but shall not be bound by, the prevailing rates or any rates established by a licensing agency or professional association in approving fees for services specified above.

(b) Rates for the services of interpreters for all parties and the court shall be established by the supreme court.

(c) No cost for investigative, expert, or other necessary services as initially approved may be exceeded prior to a subsequent finding of necessity by a justice of the appropriate court.

(d) All bills for investigative, expert, or other necessary services shall be reviewed by the judge who presided over the case, if practicable.

(e) Guardians ad litem shall be reimbursed for the mileage expenses incurred in representing their client at the ~~rate currently paid to state employees~~ **standard mileage reimbursement rate currently allowed by the Internal Revenue Service. Requests for**

reimbursement of mileage expenses shall specify the actual number of miles traveled].

(f) The expense of telephone calls shall not be reimbursed.

[(4) *Deadline for Filing Bills with Court.* All bills related to fees and expenses must be submitted no later than sixty days after the close of the case. The court may allow late filing for good cause shown, when justice so requires.]

Official Version

RULE 48-A. GUARDIANS AD LITEM FEES -- INDIGENT CASES

(1) *Itemization of Bills.* All bills related to fees and expenses must be itemized as to the time spent and expenses incurred on each case, and there shall be no separate charge for overhead. A copy of the Notice of Appointment order on appointment or other supporting document must be attached to the bill with each submission.

(2) *Fees.* The provisions of this rule shall only apply to proceedings within the original jurisdiction of the district and probate courts, in which guardians ad litem are appointed, and the party responsible for payment is indigent.

Maximum guardian ad litem compensation as authorized by the administrative justice shall be limited as follows:

(a) Time properly chargeable to case: \$60 per hour. Travel time is not a compensable event unless expressly authorized by the court in advance for exceptional circumstances.

(b) Maximum fee per day: \$400.

(c) Maximum fee for abuse and neglect cases through conclusion of dispositional hearing pursuant to RSA 169-C:19: \$1000.

(d) Maximum fee for CHINS cases (169-D) or delinquency cases (169-B) through conclusion: \$600.

(e) Maximum fee for court review hearings in guardianship of minor case or abuse and neglect case: \$180.

(f) Maximum fee for TPR case (170-C): \$1,000.

(g) Maximum fee for appeals to the superior court: \$600.

(h) Maximum fee for guardianship of minor cases pursuant to RSA 463: \$1,000.

Only upon express, written finding for good cause and exceptional circumstances by the court will the maximum fees be exceeded or will additional fees be authorized. All petitions to exceed the maximum fee guidelines must be approved prior to the guidelines being exceeded; provided, however, that the court may waive the requirement for prior approval when justice so requires.

When a guardian ad litem represents more than one client on any particular day, the hours spent shall be allocated accordingly. Representation of more than one client on the same day and in the same court shall be noted on the bills submitted. All bills shall be reviewed by the judge who presided over the case, if practicable.

The adequacy of the rates prescribed by this rule may, upon request of the supreme court, be reviewed periodically by the advisory committee on rules.

(3) *Expenses - Reimbursable.* Investigative, expert, or other necessary services may be compensated only upon a finding of necessity and reasonableness by a justice of the appropriate court, made prior to said expense being incurred.

(a) Except for those services for which rates are established by the supreme court, the presiding justice may consider, but shall not be bound by, the prevailing rates or any rates established by a licensing agency or professional association in approving fees for services specified above.

(b) Rates for the services of interpreters for all parties and the court shall be established by the supreme court.

(c) No cost for investigative, expert, or other necessary services as initially approved may be exceeded prior to a subsequent finding of necessity by a justice of the appropriate court.

(d) All bills for investigative, expert, or other necessary services shall be reviewed by the judge who presided over the case, if practicable.

(e) Guardians ad litem shall be reimbursed for the mileage expenses incurred in representing their client at the standard mileage reimbursement rate currently allowed by the Internal Revenue Service. Requests for reimbursement of mileage expenses shall specify the actual number of miles traveled.

(f) The expense of telephone calls shall not be reimbursed.

(4) *Deadline for Filing Bills with Court.* All bills related to fees and expenses must be submitted no later than sixty days after the close of the case. The court may allow late filing for good cause shown, when justice so requires.

Amend Superior Court Rule 93-A as follows:

Unofficial Annotated Version

MINOR VICTIMS OR WITNESSES – SEX-RELATED CASES

93-A. In any criminal case alleging a sex-related offense in which a minor child was a victim, the Court shall allow the use of anatomically correct drawings and/or anatomically correct dolls as demonstrative evidence to assist the alleged victim or minor witness in testifying, unless otherwise ordered by the Court for good cause shown.

In the event that the alleged victim or minor witness is nervous, afraid, timid, or otherwise reluctant to testify, the Court may allow the use of leading questions during the initial testimony but shall not allow the use of such questions relating to any essential element of the criminal offense.

The Clerk shall schedule a pretrial conference, to be held within forty-five (45) days of the filing of an indictment, for the purpose of establishing a discovery schedule and trial date. At such conference, the Court shall consider the advisability and need for the appointment of a guardian ad litem to represent the interests of the alleged victim.

[In the event that a guardian ad litem is appointed to represent the interests of a minor victim or witness, the role and scope of services of the guardian ad litem shall be explicitly outlined by the trial judge prior to trial.]

[The guardian ad litem appointed under this rule shall be compensated at the same hourly rate, and shall be subject to the same case maximums, as set forth for defense counsel in misdemeanor cases under the provisions of Supreme Court Rule 47. The guardian ad litem shall also be reimbursed for his or her investigative and related expenses, as allowed under Rule 47, upon a finding of necessity and reasonableness by a justice of the appropriate court, made prior to the said expenses being incurred.]

Official Version

MINOR VICTIMS OR WITNESSES – SEX-RELATED CASES

93-A. In any criminal case alleging a sex-related offense in which a minor child was a victim, the Court shall allow the use of anatomically correct drawings and/or anatomically correct dolls as demonstrative evidence to assist the alleged victim or minor witness in testifying, unless otherwise ordered by the Court for good cause shown.

In the event that the alleged victim or minor witness is nervous, afraid, timid, or otherwise reluctant to testify, the Court may allow the use of leading questions during the initial testimony but shall not allow the use of such questions relating to any essential element of the criminal offense.

The Clerk shall schedule a pretrial conference, to be held within forty-five (45) days of the filing of an indictment, for the purpose of establishing a discovery schedule and trial date. At such conference, the Court shall consider the advisability and need for the appointment of a guardian ad litem to represent the interests of the alleged victim.

In the event that a guardian ad litem is appointed to represent the interests of a minor victim or witness, the role and scope of services of the guardian ad litem shall be explicitly outlined by the trial judge prior to trial.

The guardian ad litem appointed under this rule shall be compensated at the same hourly rate, and shall be subject to the same case maximums, as set forth for defense counsel in misdemeanor cases under the provisions of Supreme Court Rule 47. The guardian ad litem shall also be reimbursed for his or her investigative and related expenses, as allowed under Rule 47, upon a finding of necessity and reasonableness by a justice of the appropriate court, made prior to the said expenses being incurred.

APPENDIX L

Amend Probate Court Rule 20, which was previously amended by supreme court order dated March 21, 2006, to correct an error in said order, so that Rule 20, as amended, shall state as follows (this order supersedes the amendment to Rule 20 set forth in the March 21, 2006 order):

Official Version

Rule 20. WITHDRAWALS

A. Parties may withdraw an Appearance in the following manner:

1. **A Pro Se Party, including Pro Se Creditor** shall file a withdrawal with the Register and certify that a copy of the withdrawal has been forwarded to all other Parties.

2. **An Attorney for a Creditor** shall file a withdrawal with the Register and certify that a copy of the withdrawal has been forwarded to the Party for whom the Attorney appears at such Party's last known address and to all other Parties.

3. **Attorney for any other party and Guardian ad Litem.** Other than limited representation by attorneys as allowed by Rule 14 and Professional Conduct Rule 1.2(f), an Attorney for any other party and Guardian ad Litem shall file a motion to withdraw with the Register and certify that a copy of the motion has been forwarded to the Party for whom the Attorney appears at such Party's last known address and to all other Parties. In cases scheduled for a hearing, no motion to withdraw shall be granted except for good cause shown. A factor which may be considered by the Court in determining whether good cause for withdrawal has been shown is the client's failure to meet his or her financial obligations to pay for the Attorney's services. A Withdrawal is not effective until the motion to withdraw is granted by the Court.

4. **Attorney for Respondent.** Other than limited representation by attorneys as allowed by Rule 14 and Professional Conduct Rule 1.2(f), an Attorney for Respondent shall file a motion to withdraw with the Register and certify that a copy of the motion has been forwarded to the Party for whom the Attorney appears at such Party's last known address and to all other Parties.

(a) In cases scheduled for a hearing, no motion to withdraw shall be granted except for good cause shown. A factor which may be considered by

the Court in determining whether good cause for withdrawal has been shown is the client's failure to meet his or her financial obligations to pay for the Attorney's services. A Withdrawal is not effective until the motion to withdraw is granted by the Court.

(b) Whenever an Attorney is allowed to withdraw an Appearance, and no other Appearance is contemporaneously entered, the Register shall notify the Party by mail of such withdrawal, and, unless the Party appears pro se or by an Attorney by a date fixed by the Court, any contested matter shall proceed as though that Party has defaulted and does not wish to be heard.

5. Automatic Termination of Limited Representation. Any limited representation appearance filed by an attorney, as authorized under Professional Conduct Rule 1.2(f) and Rule 14 of this Court, shall automatically terminate upon completion of the agreed representation, without the necessity of leave of Court, provided that the attorney shall provide the Court a “withdrawal of limited appearance” form giving notice to the Court and all parties of the completion of the limited representation and termination of the limited appearance. Any attorney having filed a limited appearance who seeks to withdraw prior to the completion of the limited representation stated in the limited appearance, however, must comply with either 3. or 4. above, as may be applicable.

B. The Court upon Motion, or on its own Motion, may strike a Party from the record, if the Party no longer has an interest in the matter.

APPENDIX M

Amend Family Division Rules, General Rule 7, as follows:

Unofficial Annotated Version

7. Miscellaneous:

[A.] Equity rules of the superior court not inconsistent herewith are adopted by the family division and are incorporated herein by reference. If any superior court equity rules conflict with the specific rules of the family divisions, the rules of the family division shall govern.

[B. To the extent not already incorporated herein by reference above, Superior Court Rules 14(d), 15(e), 15(f), and 21 are specifically incorporated herein by reference.]

Official Version

7. Miscellaneous:

A. Equity rules of the superior court not inconsistent herewith are adopted by the family division and are incorporated herein by reference. If any superior court equity rules conflict with the specific rules of the family divisions, the rules of the family division shall govern.

B. To the extent not already incorporated herein by reference above, Superior Court Rules 14(d), 15(e), 15(f), and 21 are specifically incorporated herein by reference.